



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
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CONSUMER PROTECTION DIVISION  
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# Press Release

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**ATTORNEY GENERAL MCGRAW ANNOUNCES  
CMS POOL DEFENDANTS ARE  
ENJOINED FROM SELLING POOLS IN WEST VIRGINIA**

On Thursday, September 30, 2004 the Circuit Court of Marion County held an injunction hearing in the Attorney General's lawsuit against Donna, Carmine, and Anthony Diulus, who do business together as CMS, CMS Pools, and CMS Construction. At the hearing, the State sought an order enjoining the defendants from further sales and advertising of pools until such time as the case is resolved, requiring the defendants to give the Attorney General's office a list of all of West Virginia consumers who bought pools from CMS from January 1, 1993 to the present, and requiring the defendants to post a \$250,000 bond.

After the State presented one witness, the defendants asked to meet in the Judge's chambers to seek an agreement. The parties reached an agreement whereby the defendants will be enjoined from the sale and advertising of pools until such time the lawsuit is resolved and will provide the State a list of all West Virginia consumers who bought pools from them from January 1, 1993 to the present.

The Court has scheduled a hearing for November 8, 2004 at 10:00 a.m., on the issue of whether CMS will be required to post a bond. The State is asking for a bond of \$250,000 because the defendants appear to have no ties to West Virginia. The defendants live in Pennsylvania and own no real estate or other assets in West Virginia. The State seeks the bond in order to ensure that money will remain to pay consumer restitution at the end of the case.

The Attorney General filed this lawsuit on August 31, 2004, alleging that CMS advertises and sells above-ground swimming pools throughout West Virginia using a bait and switch sales scheme. The lawsuit charges that CMS advertises an above-ground pool, including deck, ladder and fencing, for about \$699 in the local newspaper. The ad lists a toll-free number for consumers to call. When a consumer calls to ask about the pool in the ad, CMS schedules a meeting at the consumer's home. At the meeting, the sales person disparages the advertised pool and recommends that the consumer purchase a more expensive model. As a result, most consumers bought pools that cost between \$3,000 and \$5,500. Although the sales were home solicitation sales, CMS did not give consumers the legally required notice of right to cancel that applies to home solicitation sales.

The suit is based on consumer complaints of consumers who received warranties on their pools and liners, varying from 20 years to life. When these consumers had problems with their pools, CMS failed to repair them under the warranty. Attorney General McGraw warns, "Consumers should always carefully research a business and check references when purchasing home improvement work."

For more tips on purchasing home improvement goods and services please click [here](#). Persons wishing to file a complaint are encouraged to call Attorney General McGraw's Consumer Protection Division at 1-800-368-8808.

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